IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 970 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARGOVANBHAI GIRDJARBHAI MOCHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 970 of 1988

MR KG PANDIT for Petitioner No. 1

MR LR PUJARI, AGP, for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 13/01/2003

ORAL JUDGEMENT

By filing instant petition under Articles 226 & 227 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondents to allow the petitioner to continue on his original post of Cobbler with all consequential benefits. The petitioner has also prayed to quash the action of the respondent No.3 of not allowing him to discharge his duties with effect from February 10, 1988.

2. The petitioner has claimed that he was previously employed on permanent basis with Navjeevan Mills, Kalol since October 25, 1948. It may be stated that the said Mills Company closed down its operation since 1985. The case of the petitioner is that he was asked to join the respondent No.3-Mills Company from August 28, 1986 as a permanent worker and was getting about Rs.1000/- to Rs.1200/- every month as salary. The grievance made by the petitioner is that his services were abruptly terminated by the respondent No.3-Mills Company with effect from February 10, 1988, which is illegal and contrary to the principles of natural justice. The claim advanced by the petitioner is that the management of the respondent No.3-Mills Company has been taken over by the Gujarat State Textile Corporation Limited, which is registered under the provisions of the Companies Act, 1956, and in view of the provisions of the Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986, the petition against the respondent No.3-Mills Company is maintainable. What is averred by the petitioner is that in order to accommodate one Mr.Sohanlal Bhuraji of Marsden Mills, Ahmedabad, his services have been orally terminated with an oblique motive. Under the circumstances, the petitioner has filed instant petition and claimed reliefs to which reference is made earlier.

3. On service of notice, Mr. V.R.Saple, the then Pay Officer of the Gujarat State Textile Corporation Limited has filed reply affidavit controverting the averments made in the petition. In the reply it is maintained that pending appointment of permanent Cobbler in the respondent No.3-Mills Company, the petitioner was appointed as a Cobbler on temporary basis and, therefore, the petitioner is not entitled to the reliefs claimed in the petition, more particularly when a suitable candidate has been appointed in the respondent No.3-Mills Company on permanent basis.

4. Mr. M.A.Kuvadia, who is Official Liquidator, has filed further affidavit-in-reply on behalf of respondent No.2 stating, inter alia, that the respondent No.3-Mills

Company, with which the petitioner was employed, was facing financial problems due to overall recession in the market of textile industries and that under The Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986, which was enacted by the State of Gujarat with a view to avoiding widespread unemployment, the management of the respondent No.3-Mills Company was taken over by the Gujarat State Textile Corporation Limited. It is further stated in the said reply that the Sick Mills Companies, the managements of which were taken over by the Gujarat State Textile Corporation Limited, were managed till 1987, but thereafter the said Corporation itself was in difficulty and on recommendations by B.I.F.R., the Board of the Corporation had forwarded its opinion to the High Court, pursuant to which the High Court has wound up the said Corporation, which is a Company, vide order dated February 6, 1997 passed in Company Petition No. 205 of 1996 and, therefore, the petition has become infructuous. The Official Liquidator has produced order of the High Court dated February 6, 1987 passed in Company Petition No.205/1996 as Annexure-I along with his reply affidavit.

5. I have heard the learned counsel for the parties, at length, and considered the documents forming part of the petition. The fact whether the petitioner was a permanent employee of the respondent No.3-Mills Company or not, is seriously in dispute. Mr. V.R.Saple, the then Pay Officer of the Gujarat State Textile Corporation Limited, has stated in paragraph 5 of his affidavit-in-reply that according to the Standing Orders, which are applicable to the permanent workers, passes are issued to the workers who are discharging duties as permanent employees, but in this case, no permanent pass had been issued to the petitioner. This statement made on oath by Mr. Saple is not controverted by the petitioner by filing affidavit-in-rejoinder. The question whether the petitioner was a permanent employee of the respondent No.3-Mills Company or not, is a highly disputed question of fact, which cannot be gone into effectively by the Court in a petition filed under Articles 226 & 227 of the Constitution. As the petitioner has failed to establish satisfactorily that he was a permanent employee of the respondent No.3-Mills Company, the contention raised that he was a permanent employee of the respondent No.3-Mills Company cannot be accepted, nor can the reliefs claimed on that basis be granted. The petitioner has not averred in the petition that termination of his permanent services was contrary to any of the provisions of the Industrial Disputes Act, 1947. Therefore, the petition is liable to be dismissed. Further, the Gujarat State Textile Corporation Limited,

which had taken over the management of the respondent No.3-Mills Company, itself has been ordered to be wound up by the High Court vide order dated February 6, 1997 passed in Company Petition No.205 of 1996. Thus, the reliefs claimed in the petition have become infructuous with passage of time, and cannot be granted by the Court.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs. It may be stated that the ad-interim relief in terms of paragraph 8(B) of the petition, which was granted by the Court vide order dated February 29, 1988, has been vacated by the Court vide order dated April 18, 1988. The interim relief, if any, shall stand vacated.

(J.M.Panchal,J.)

(patel)